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COMMITTEE OF THE REGIONS 2020 Rule of Law Report The rule of  
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**COMMISSION STAFF WORKING DOCUMENT**

**2020 Rule of Law Report  
Country Chapter on the rule of law situation in Slovakia**

*Accompanying the document*

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2020 Rule of Law Report  
The rule of law situation in the European Union**

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## **ABSTRACT**

Efforts have been undertaken in recent years to improve the quality and efficiency of the Slovak justice system and have started to show some promising results. However, the justice system is characterised by a very low level of perceived judicial independence among both the general public and businesses. Since 2019, this has been exacerbated by serious concerns about the full integrity of the judiciary and prosecution services. The Government appointed in March 2020 announced a range of reforms in sensitive areas, such as the appointment procedures for members of the Judicial Council, the Constitutional Court and the Supreme Court as well as the Prosecutor General and introducing a fixed retirement age for judges.

The fight against corruption has been identified as one of the key priorities in the political programme of the new Government, which announced a range of reforms to improve the situation. The capacity to detect, investigate and prosecute corruption offences is hampered by a lack of resources and dedicated analytical expertise in both the Special Prosecution Office and the National Crime Agency, as well as difficulties in obtaining evidence. Lobbying activities are not regulated and ‘revolving doors’ provisions are weak. New legislation concerning asset declarations and conflict of interests of members of the government and other public office-holders took effect at the beginning of 2020.

Slovakia’s Constitution and secondary legislation provide a robust legal framework for the protection of freedom of expression, the right to access public information, the establishment of structures to ensure media pluralism and press rights. However, concerns have been raised about a lack of robust rules for ensuring transparency of media ownership, at preventing conflicts of interests between media owners and political parties and establishing a framework for the distribution of state advertising. The assassination of investigative journalist Ján Kuciak and his fiancée in 2018 is widely considered to have marked a genuine turning point in Slovak society and raised awareness about the need to improve the safety of journalists.

As regards the system of checks and balances in Slovakia, there is a need to improve the legislative process by strengthening the involvement of stakeholders and civil society and making better use of the existing impact assessment framework. Independent authorities such as the National Centre for Human Rights or the Public Defender of Rights have an important role to play in securing checks and balance, but need to be fully mandated and equipped to effectively exercise their roles. The Government announced plans for reforms to strengthen rule of law, in particular reforms to increase the powers of the Constitutional Court. The rule of law as a subject of public debate has gained in importance over the last years, which could foster the emergence of a more robust rule of law culture.

## **I. JUSTICE SYSTEM**

The court system of the Slovak Republic consists of 54 District Courts, 8 Regional Courts, the Specialised Criminal Court, the Supreme Court and the Slovak Constitutional Court<sup>1</sup>. There is no distinct branch of administrative courts in Slovakia. The Regional Courts function as the courts of appeal in civil, commercial and criminal cases and at the same time function as the courts of first instance in administrative matters. The Specialised Criminal Court is competent to judge serious criminal matters as enumerated in the relevant provision of the Code of Criminal Procedure<sup>2</sup>. The Judicial Council plays a central role in the self-administration of the judiciary and in the appointment, suspension and dismissal of judges as well as in maintaining judicial ethics. Currently, half of its members (9 out of 18) are judges elected by their peers. In its present composition, some of the Judicial Council's other members are appointed by the Slovak President, Parliament and Government<sup>3</sup>. The public prosecution service of Slovakia is an independent state authority headed by the Prosecutor General<sup>4</sup>. The Slovak Bar Association is an independent self-administrative professional organisation<sup>5</sup>.

### **Independence**

**Longstanding concerns regarding the independence and integrity of the Slovak justice system have continued to mount since August 2019.** Revelations and findings from criminal investigations point to a number of cases of high-level corruption. This includes concerns over the possible exercise of undue influence and collusion by individual members of the executive and other politicians over and with members of the judiciary, including high-ranking judges.<sup>6</sup> Furthermore, suspicions arose regarding individual cases of abuse of office by judges and prosecutors, including a former Prosecutor General<sup>7</sup>. In autumn 2019, these events sparked public protests and reinforced calls on the authorities to step up efforts to reduce corruption in the Slovak justice system. A number of disciplinary proceedings as well as criminal investigations have been initiated against a number of judges and prosecutors, some of whom have been suspended or resigned from office. In certain cases, ongoing criminal investigations have also led to detentions of judges and prosecutors<sup>8</sup>.

**The perceived level of independence of the judiciary in Slovakia has remained very low, despite some efforts in the past to strengthen judicial independence and transparency.** The perceived level of independence of courts and judges among the general public in Slovakia remains very low, with a clear minority of both the general population and

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<sup>1</sup> For a description of the judicial structure, see e.g. the Annual study for the European Commission carried out by CEPEJ.

<sup>2</sup> Slovak Code of Criminal Procedure, para. 14 (e.g. premeditated murder, corruption, terrorism, organised crime, severe economic crimes, damaging the financial interests of the EU etc.).

<sup>3</sup> Art. 141a of the Slovak Constitution.

<sup>4</sup> Arts. 149 – 151 of the Slovak Constitution; Act No. 153/2001 Coll. on Public Prosecution Service.

<sup>5</sup> Parliamentary Act No. 586/2003 Coll. on the Legal Profession and on Amending Act No. 455/1991 Coll. on the Business and Self-employment Services (Business Licensing Act) of 4 December 2003.

<sup>6</sup> See European Commission, 2020 Country Report Slovakia, SWD(2020) 524 final.

<sup>7</sup> European Commission, 2020 Country Report Slovakia, SWD(2020) 524 final, pp. 6, 20, 50. The European Parliament has also expressed concerns as regards the situation in Slovakia, see European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia; resolution of 19 April 2018 on protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová.

<sup>8</sup> This has also been reported by Slovak authorities during the preparation of the present report.

companies perceiving the level of judicial independence as ‘fairly or very good’ (26 % of the general population and 15 % of companies). The reason most often invoked for the perceived lack of judicial independence is related to interference or pressure from the Government and politicians<sup>9</sup>. It is noteworthy that this comparatively low level of perceived judicial independence has persisted over an extended period<sup>10</sup>, which is also recognised by the Slovak authorities<sup>11</sup>.

**The Government has announced reform plans to strengthen judicial independence and integrity.** In this context, it is necessary to recall attempts of previous Governments to address some of the longstanding concerns over the integrity of judges, which had led to a change of the Slovak Constitution and included a controversial introduction of mandatory background checks on judges and candidate judges on the basis of information from the Slovak National Security Authority<sup>12</sup>. The Slovak Constitutional Court, in a landmark ruling on 30 January 2019<sup>13</sup> held that these background checks were in breach of the principle of judicial independence and that the constitutional amendment dating from 2014 was unconstitutional<sup>14</sup>.

**The Government has announced reform plans to change the current composition of the Judicial Council.** These plans include the appointment process, *inter alia* to guarantee regional representation and to strengthen the controls of asset declarations of judges<sup>15</sup>. Six new members were appointed on 23 April 2020, 26 April 2020 and 20 May 2020<sup>16</sup>, and a new President of the Judicial Council was elected on 29 June 2020<sup>17</sup>, following the resignation of some of its members on 23 March 2020<sup>18</sup>, and the resignation of the former President on 23 June 2020<sup>19</sup>.

**The Government has also announced plans to strengthen the appointment process for the Constitutional Court.** In past years, the appointment of new judges of the Constitutional Court has repeatedly been the subject of controversy between the Government, Parliament and the Slovak President, regularly resulting in long delays in the appointment process and even endangering the sound functioning of the Court. Indeed in 2019, only four out of the

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<sup>9</sup> Figures 44 and 46, 2020 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>10</sup> 2013 – 2020 EU Justice Scoreboard; World Economic Forum, 2012-2019 Global Competitiveness. It is also to be noted that Slovak lawyers rate the independence of judges in their country very low (5.4/10 points) in comparative terms (figure 7 of ENCJ/CCBE Survey among lawyers on the independence of judges 2018-2019).

<sup>11</sup> E.g. input from Slovakia for the 2020 Rule of Law Report, point 10.

<sup>12</sup> European Commission, 2015 Country Report Slovakia, SWD(2015) 44 final/2, pp. 35 – 36.

<sup>13</sup> Judgment of the Constitutional Court PL. ÚS 21/2014-96.

<sup>14</sup> 2018 Global Review of Constitutional Law, p. 272.

<sup>15</sup> Programové vyhlásenie vlády Slovenskej republiky na obdobie rokov 2020 – 2024 of 19 April 2020 (hereinafter: Political Manifesto), p. 8.

<sup>16</sup> Communiqués of the Judicial Council of 26, 30 April and 20 May 2020.

<sup>17</sup> A former judge and President of the Slovak Constitutional Court and Slovak Advocate-General at the Court of Justice of the European Union (Prof. Dr. Ján Mazák).

<sup>18</sup> Communiqué of the Judicial Council of 23 March 2020; noting that one of the new members filled a position that was vacant since a resignation of a former member on 13 November 2019, Communiqué of the Judicial Council of 13 November 2019.

<sup>19</sup> Communiqué of the Judicial Council of 23 June 2020.

foreseen 13 judges were in office<sup>20</sup> because the selection and appointment procedure for the remaining judges was not concluded<sup>21</sup>. This issue has been addressed by a country-specific recommendation in the context of the 2019 European Semester<sup>22</sup>. On a positive note, in October 2019 the Slovak President appointed the remaining number of judges to the Constitutional Court ending an impasse that had existed since February 2019.

**The Government further announced that it would introduce a fixed retirement age for judges.** Plans include the introduction of a fixed retirement age of 65 years for judges and of 70 years for judges of the Constitutional Court<sup>23</sup> as currently, no fixed retirement age for judges exists in Slovakia.<sup>24</sup> It is important that this envisaged reform be in line with EU law requirements<sup>25</sup> and take account of Council of Europe recommendations relating to judicial independence<sup>26</sup>.

## Quality

**Efforts to improve the quality of the Slovak justice system have picked up over the last years.** Against the background of a series of country-specific recommendations in the context of the European Semester in 2014, 2016 and 2017 to improve the efficiency and quality of the Slovak justice system<sup>27</sup>, the Slovak authorities have started to implement a number of reforms aimed at improving both the efficiency and quality of the Slovak justice system. This process has also been informed by a comprehensive functional review of the Slovak justice system<sup>28</sup>, which identified a number of areas for reform<sup>29</sup> and provided for 62 recommendations on how to improve the efficiency and quality of the Slovak justice system.

**Reforms of the justice system have been adopted and are being implemented, whilst additional reforms have been announced.** This includes in particular the introduction of so-called ‘flying’ or guest judges to address temporary workload challenges in individual courts, legislative measures to de-register old and inactive enforcement cases that had been a drain on resources and ongoing projects on case weighting as well as time-frames.

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<sup>20</sup> European Commission, 2019 Country Report Slovakia, SWD(2019) 1024 final, p. 47. See further the Venice Commission Opinion (CDL-AD(2017)001-e).

<sup>21</sup> After the end of the term of office of 9 judges of the Constitutional Court in the beginning of 2019, the Parliament (drawing up the list of candidates) could not agree on the final list of candidates to be submitted to the President of the Republic.

<sup>22</sup> Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Slovakia and delivering a Council opinion on the 2019 Stability Programme of Slovakia, OJ C 301, 5.9.2019, pp. 148–153.

<sup>23</sup> Political Manifesto, p. 8.

<sup>24</sup> Under Article 147 of the Slovak Constitution, a judge may be recalled by the President of the Slovak Republic on a proposal by the Judicial Council if he or she has attained the age of 65.

<sup>25</sup> E.g. cases of Court of Justice C-619/18, *Commission v Poland (Indépendance de la Cour suprême)* and C-192/18, *Commission v Poland (Indépendance des juridictions de droit commun)*, C-282/12, *Commission v Hungary*.

<sup>26</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 49.

<sup>27</sup> Council Recommendations of 8 July 2014 (OJ C 247, 29.7.2014, p. 122–126); of 12 July 2016 (OJ C 299, 18.8.2016, p. 61–64); of 11 July 2017 (OJ C 261, 9.8.2017, p. 110–113).

<sup>28</sup> CEPEJ, Efficiency and Quality of the Slovak Judicial System. This study was financed from European Structural and Investment Funds under the operational programme ‘Effective Public Administration 2014 – 2020’.

<sup>29</sup> This includes areas such as court organization, budgetary issues, human resources, court management and efficiency and quality of courts.

**Slovakia is actively engaging to advance the digitalisation of its justice system.** The Government has announced to further promote dissemination of the use of information technology in courts<sup>30</sup>. This would complement the on-going efforts to upgrade the available IT tools and analytical capacity<sup>31</sup>. In particular, a completed project on performance dashboards for all Slovak courts to increase transparency and allow the visualisation of the key performance indicators<sup>32</sup> is a promising example and has already gained the interest from stakeholders outside of Slovakia. Certain IT projects have been receiving technical support at European level<sup>33</sup>. A 2018 study concluded that the Slovak judiciary is already subject to comparatively high levels of transparency<sup>34</sup>.

**Some challenges remain as regards access to justice and potentially high court fees.** Legal aid remains not fully accessible for individuals at risk of poverty and court fees in specific commercial disputes are among the highest in the EU<sup>35</sup>. The Government has announced a review of the current legal aid system with a view to reviewing existing court fees<sup>36</sup> and covering a larger group of low-income earners, which is not otherwise able to access justice.

## **Efficiency**

**Efficiency-oriented reforms undertaken in past years have started to show results and by now, the Slovak justice system largely manages to deal with its workload.** In particular, courts continue to perform efficiently in terms of length of proceedings in litigious civil and commercial cases in first instance (157 days in 2018 compared to 171 days in 2017) and clearance rate (130.6% in 2018), also benefitting from a reduced inflow of new cases. However, the performance of courts in administrative cases has dropped as the clearance rate fell (96.1% in 2018 compared to 118.1% in 2017), the disposition time further increased (401 days in 2018 compared to 317 days in 2017)<sup>37</sup>. Authorities also indicated that there are still some challenges concerning the more efficient resolution of older cases, i.e. those pending for more than two years. The Government has announced plans to create a new Supreme Administrative Court, to reform Slovakia's judicial map and to increase specialisation of judges<sup>38</sup>.

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<sup>30</sup> Political Manifesto, p. 10.

<sup>31</sup> Authorities have also made progress in the absorption of earmarked funding from the European Structural and Investments Funds for the 2014–2020 funding period, which provides the bulk of funding for the further reform of the justice system. Moreover, since 2018, technical support has been provided by the European Commission under the Structural Reform Support Programme to the Slovak ministry of justice to develop an IT Architecture strategy and transition plan, to set up tools for assessing the courts' performance and to build capacity for better court and case management.

<sup>32</sup> The data can be found at: <http://web.ac-mssr.sk/dashboard/>.

<sup>33</sup> E.g. CEPEJ-COOP(2017)15, Report on the evaluation of the current state of affairs of IT tools for the Slovak judicial system and advise on their development.

<sup>34</sup> Transparency International Slovakia (2018), Let's judge the judges – How Slovakia opened its judiciary to unprecedented public control.

<sup>35</sup> Figures 23 & 25, 2020 EU Justice Scoreboard.

<sup>36</sup> Political Manifesto, p. 13.

<sup>37</sup> Cf. CEPEJ, Study on the functioning of judicial systems in the EU Member States, Part 2, p. 611.

<sup>38</sup> Political Manifesto, p. 8.

## II. ANTI-CORRUPTION FRAMEWORK

The legal and institutional framework to prevent, investigate and prosecute corruption is broadly in place. The competences for the prevention, detection and prosecution of corruption are shared between several authorities. The Office of the Government is the central body for the co-ordination of the prevention of corruption. The National Crime Agency of the Presidium of the Police Force is in charge of the detection and investigation of corruption offences with the exception of corruption crimes committed by members of the police itself and certain law enforcement agencies falling under the remit of the Bureau of Inspection Service. The Special Prosecutor's Office has jurisdiction over the investigation of criminal offences. The control of asset declarations is currently performed at national level by a parliamentary committee and, at the local level, by a local council committee.

**Slovakia scored 50/100 over the past three years in a row in Transparency International's Corruption Perception Index, ranking 16<sup>th</sup> in the European Union and 59<sup>th</sup> globally<sup>39</sup>.** 87% of respondents consider corruption widespread (EU average 71%) and 41% of people feel personally affected by corruption in their daily life (EU average 26%)<sup>40</sup>. According to the surveys, 88% of companies consider corruption to be widespread (EU average 63%) and 53% of companies consider that corruption is a problem when doing business (EU average 37%). Then, 37% of people find that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%), while 13% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%)<sup>41</sup>.

**The fight against corruption has been identified as one of the key priorities in the political programme of the new government,** which announced a range of reforms in this area. This responds to public outcry over the revelations made in the context of investigations into the murder of journalist Ján Kuciak and his fiancée Martina Kušnírová that a top oligarch exerted significant influence over politicians, law enforcement and the judiciary. These revelations triggered, amongst others, the resignation of the Prosecutor General in March 2019<sup>42</sup>.

**The criminal legal framework for fighting corruption is broadly in place and specialised institutions have been set up.** All forms of active, passive, direct and indirect corruption are criminalised. As a result of the third evaluation round of implementation of the OECD Anti-Bribery Convention<sup>43</sup>, national provisions on foreign bribery offences have been amended. Slovakia adopted new legislation on criminal liability, which regulates sanctions applicable to legal persons<sup>44</sup>.

**The competences for the prevention, detection and prosecution of corruption are shared between several authorities.** The Office of the Government is the central body for the co-ordination of the prevention of corruption, including sectoral anti-corruption coordinators

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<sup>39</sup> Transparency International (2020), 2019 Corruption Perceptions Index.

<sup>40</sup> Special Eurobarometer 502 (2020).

<sup>41</sup> Flash Eurobarometer 482 (2019).

<sup>42</sup> On 3 September 2020, the Special Criminal Court acquitted two persons charged with the murders; this ruling is being appealed by the Slovak prosecution services.

<sup>43</sup> OECD (2012) Slovakia: Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the Slovak Republic.

<sup>44</sup> Act No. 91/2016 on the Criminal Liability of Legal Persons.

who have been put in place at each central administration body since 2019. In December 2019, the Office of the Government introduced a dedicated software tool to increase the effectiveness of corruption risk management. The National Crime Agency of the Presidium of the Police Force (NAKA) is in charge of detection and investigation of corruption offences with the exception of corruption crimes committed by members of the police itself and certain law enforcement agencies<sup>45</sup>, falling under the remit of the Bureau of Inspection Service. The Special Prosecutor's Office has jurisdiction over the investigation of criminal offences under the substantive jurisdiction of the Specialised Criminal Court (SCC), which is a court of first instance established in 2009.

**In recent years, only few high-level corruption cases have been investigated and are being prosecuted.** According to statistics of the Special Prosecution Office, only 48 persons were indicted for corruption in 2018, the lowest number since 2009, while 63 persons concluded plea bargain agreements. The country specific recommendation addressed to Slovakia in the context of the European Semester in 2019 points out that corruption continues to represent a challenge as Slovakia only has limited capacity to investigate and prosecute high-level corruption cases<sup>46</sup>. Consequently, there are only very few high-level corruption cases that have been adjudicated by the Specialised Criminal Court. In this regard, the weak protection offered to whistle-blowers is a point of concern. Disclosing crimes of corruption continues to occur at a very low level with few high-level corruption cases being prosecuted.

**The effectiveness of the specialised anti-corruption institutions is a serious challenge.** The National Crime Agency (NAKA) has been reorganised in 2019, but its resources were not increased. One key challenge identified by stakeholders as regards detecting and prosecuting corruption, including high-level cases, is the investigation capacity. In particular the capacity to find the first indications of corruption is hampered by the lack of resources and specific expertise<sup>47</sup>. The Special Prosecution Office has raised concerns about its resources. It is staffed with one prosecutor in the position of the Head of Anti-Corruption Department of the Office and four additional prosecutors. On average, each prosecutor is in charge of approximately 80 cases at a time, which raises questions in relation to the effectively supervising investigations. The Special Prosecution Office has asked for more resources, but so far, there appear to be no plans to increase the number of prosecutors.

**The 2019 Whistle-blower Protection Act aims to increase the protection measures by establishing an independent office for complaints but its implementation is being delayed.** The Act was adopted in January 2019<sup>48</sup>, however as at September 2020 the head of the office has not been appointed and the office has not yet taken up its function. The new law aims at addressing concerns raised by the previous framework, notably the uncertainty arising from the requirement to report in good faith, the discrepancies in the protection

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<sup>45</sup> Members of armed security units, members of the judiciary guards and prison wardens corps and customs officers.

<sup>46</sup> Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Slovakia and delivering a Council opinion on the 2019 Stability Programme of Slovakia, pp. 148–153.

<sup>47</sup> Input from Slovakia for the 2020 Rule of Law Report, section on Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation).

<sup>48</sup> Act no. 54/2019 Coll. on Whistleblowers' Protection.

accorded to different categories of officials, and the absence of simultaneous internal and external channels for reporting misconduct<sup>49</sup>.

**There is currently no regulation governing lobbying in Slovakia and postemployment restrictions are weak.** Partial measures and rules, such as restrictions for gifts, received by public officials in connection with their public functions, are subject to the Act on Conflict of Interests<sup>50</sup>. The programme of the new government also contains a commitment to adopt an act on lobbying which will combine legislative measures, a mandatory registry of lobbyists, a code of conduct and the creation of a special registry (on areas of intended lobbying, information on their clients, costs and remuneration for lobbying activity)<sup>51</sup>. In this regard, the anticorruption plan adopted in September 2019 already foresees that the Ministry of Justice should submit draft legislation to the Government by the end of 2021. As regards ‘revolving doors’, postemployment provisions are included in the Act of Conflict of Interest. It applies exclusively to public officials who were in executive functions or members of a collective decision-making body, while advisers and senior civil servants closely associated with top executive functions are not included. Limitations after holding public office (a cooling-off period) are applicable for one year upon the end of the tenure (in case the person had decision-making powers on support, benefits or excusing from obligations for two years prior to the end of his/her office, or concluded a contract on public procurement during his/her tenure). GRECO has noted in this regard the rather limited scope of the provisions and recommended broader restrictions, which should also include senior civil servants involved in top executive functions and rules put in place to prevent former top officials from lobbying activities after they left the office<sup>52</sup>.

**New legislation concerning asset declarations and conflict of interests of members of the Government and other public office-holders took effect on 1 January 2020.** The new law<sup>53</sup> extended the scope of assets to be declared by public officials (to include the use of movables and immovables belonging to third parties, and the specification of gifts received). The aim of the new law is to remove shortcomings of the legislation as arising from the GRECO recommendations<sup>54</sup>. Act No. 66/2019 expands the scope of public officials who are subject to the Constitutional Act on Conflicts of Interests to the President and members of supervisory boards of legal persons in which the state has a majority interest and city mayors<sup>55</sup>.

**The control of asset declarations is currently performed at national level by a parliamentary committee and, at the local level, by a local council committee.** The new government has pledged to establish an independent institution, which shall not only check asset declarations but also be responsible for ethical issues. The national action plan requires the Government Office and other relevant authorities to review the mechanism of asset disclosures. A dedicated working group has been established with representatives of relevant

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<sup>49</sup> European Commission, Country Report Slovakia 2020, SWD(2020) 524 final, p. 51.

<sup>50</sup> Constitutional Act No. 357/2004 Coll. on Protection of Public Interest in the performance of functions of public officials (‘Conflict of Interest Act’).

<sup>51</sup> Political Manifesto, pp. 4 and 14.

<sup>52</sup> GRECO Fourth Evaluation Round – Evaluation Report.

<sup>53</sup> Act no. 66/2019 amending Constitutional Act no. 357/2004 Coll. on the protection of the public interest in the exercise of the functions of public officials, as amended by Constitutional Act no. 545/2005 Coll.

<sup>54</sup> GRECO Fourth Evaluation Round – Evaluation report.

<sup>55</sup> Prior to the adoption of this amendment, declarations of interests and assets of mayors were only submitted to the commission of a municipal council.

state authorities, including the Judicial Council, the General Prosecutor's Office and the National Council as well as two NGOs<sup>56</sup>.

**Integrity systems for the public administration have been improved by way of an amendment to the Civil Service Act.** This concerns state employees, including ministers, secretaries of state and heads of central state administration bodies. These legislative changes include a state employee Code of Ethics<sup>57</sup>, and a system to assess compliance of a state employee's actions with the code. The code anchors the basic ethical values for a state employee: political neutrality, impartiality, public interest, dignity and respect in interpersonal relations.

### **III. MEDIA PLURALISM**

The Constitution of Slovakia enshrines freedom of expression, the right of access to information and the right to express opinions in words, print, image or by other means, as well as to search for, receive and disseminate ideas and information. The right to access information finds legal expression in the Freedom of Information Act<sup>58</sup>. The Broadcasting and Retransmission Act<sup>59</sup> is aimed at ensuring plurality of information while the Press Act<sup>60</sup> establishes rules relating to the press and to journalists. While freedom of expression is generally considered to be robustly protected in Slovakia, criminal legislation foresees the highest punishment - imprisonment for up to 8 years - for criminal defamation among all EU Member States. The Government announced its intention to reform the legal framework for certain online media services as well as the financial resources allotted to the relevant regulatory authorities<sup>61</sup>.

**A Council for Broadcasting and Retransmission exists and has clear competences and responsibilities.** The Council's mission is to reinforce the public interest in its exercise of the right to information, freedom of expression as well as the right of access to cultural values and education. Furthermore, the Council is tasked with implementing state regulation in broadcasting, retransmission and the provision of audiovisual media services. The Council, *inter alia*, issues broadcasting licences, handles all relevant complaints, can order suspension of retransmission, imposes sanctions on broadcasters, retransmission operators and providers of on-demand audiovisual media service providers and ensures cooperation with self-regulatory bodies. The authority disposes of its own budget and the resources allotted are considered adequate for the accomplishment of its tasks<sup>62</sup>. Clear rules on appointment and dismissal of the Council's members are established by law<sup>63</sup>. The Media Pluralism Monitor 2020<sup>64</sup> concludes that the independence of the Council is overall guaranteed with the risk factor remaining stable in the low risk margin, but refers to increasing political nominations

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<sup>56</sup> Input from Slovakia for the 2020 Rule of Law Report, section on Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information).

<sup>57</sup> Decree no. 400/2019 on State Employee Code of Ethics.

<sup>58</sup> Act 211/2000 Coll., Freedom of Information Act.

<sup>59</sup> Act 308/2000 Coll., Broadcasting and Retransmission Act.

<sup>60</sup> Act 167/2008 Coll., Press Act.

<sup>61</sup> Slovakia climbed two places in the Reporters Without Borders World Press Freedom Index, now registering at 33rd position worldwide, Reporters without Borders, Slovakia.

<sup>62</sup> As confirmed during the country visit.

<sup>63</sup> The Council has nine members, who are elected and repealed by the National Council of the Slovak Republic (the Parliament).

<sup>64</sup> 2020 Media Pluralism Monitor.

as an emerging issue. Civil society organisations have complained that the Council failed to properly monitor public service television during the latest electoral period<sup>65</sup>.

**There is no systematic regulatory framework in Slovakia allowing for transparency of media ownership.** The MPM 2020 therefore concludes that this represents the highest risk area for the country. The MPM 2020 further points out that while the Act on the Register of Public Sector Partners<sup>66</sup> allows for the indirect disclosure of ultimate owners of major media outlets, media that do not do business with the state or do not receive public funding are not listed therein. While both the Council for Broadcasting and Retransmission and the Ministry of Culture gather partial information on the owners of traditional media, they lack the legal tools to obtain information with regard to ultimate owners and beneficiaries. The Slovak authorities pointed out that this poses a significant problem with regard to electronic media and that the issue is expected to be addressed by means of legislative intervention. In this context, it should also be recalled that the revised Audiovisual Media Services Directive (AVMSD) encourages Member States to adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners.

**In terms of political independence, Slovakia lacks the legal safeguards that would effectively preclude conflicts of interest between owners of media and the ruling parties, partisan groups or politicians.** This problem appears particularly acute in local publications during electoral periods given that most local media is financed or co-owned by local municipal authorities. On the other hand, the major newspapers and press agencies continue to show resistance to political pressure.

**Currently no framework for regulating the distribution of state advertising exists.** The Slovak authorities pointed out that the Broadcasting and Retransmission Act does not define the term “state advertising”. All contracts between the state and the private sector, however, are registered in the central register of contracts. This register is publicly accessible and consequently provides for a certain degree of transparency in this respect. Editorial autonomy depends on self-regulation, which the MPM 2020 considers to be usually effective in the case of those outlets, which apply the Code of Ethics of the Slovak Syndicate of Journalists.

**The murder of a journalist Ján Kuciak and his fiancée Martina Kušnírová in 2018 led to a wide-ranging debate across Slovak society on the safety of journalists.** The debate focussed on reported cases of illegal spying on journalists by, among others, a former member of the state security service, a lack of police reaction following the lodging of reports about death threats against journalists and the revelations that a top oligarch exerted significant influence over politicians<sup>67</sup>.

**It is widely agreed that Slovak civil society, the political level and the relevant authorities have reacted robustly following the assassination and in its aftermath.** Civil society and journalists’ organisations have made it clear that the assassination represented a

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<sup>65</sup> E.g. OSCE-ODIHR, Slovak Republic – Parliamentary Elections, ODIHR Election Assessment Mission Final Report (2020), p. 14.

<sup>66</sup> Act no. 315/2016.

<sup>67</sup> See also the anti-corruption part of the chapter (above).

genuine turning point in the country, not least with regard to the standing of investigative journalism in Slovak society<sup>68</sup>.

**Some degree of harassment against journalists persists.** In 2019, the Council of Europe's Platform to promote the protection of journalism and safety of journalists published four alerts for Slovakia<sup>69</sup>. The alerts concerned verbal attacks and negative communication campaigns against journalists, surveillance of journalists as well as a law mandating a right of reply for politicians<sup>70</sup>. In 2020, the Platform received two alerts, concerning criminal defamation charges against a newspaper opinion writer and a threat against a journalist<sup>71</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Slovakia is a parliamentary republic where the National Council (the Parliament) is the sole constitutional and legislative body<sup>72</sup>. The right to introduce legislation belongs to the Committees of the Parliament, individual members of the Parliament and the Government.<sup>73</sup> The Constitutional Court decides on the compliance of laws with the Constitution, constitutional acts and international agreements and ensures respect for fundamental and constitutional rights. Independent authorities also play a role in safeguarding fundamental rights.

**Improvements have been announced as regards the process for preparing and enacting laws.** The Government appointed in March 2020 has indicated that it aims to improve the stability and predictability of the regulatory framework through actions such as improving of planning and of transparency in the legislative process. In addition, the Government has indicated its intention to focus on strengthening compliance with existing legislation<sup>74</sup> and to strengthen the analytical units<sup>75</sup>. Currently, conducting impact assessments and consulting stakeholders are not yet well-established practices for enacting legislation in Slovakia. While the policy-making process is formally based on consultations and evidence, the political

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<sup>68</sup> E.g. Committee to Protect Journalist's analysis (2019), Mission Journal: One year on, Ján Kuciak murder seen as turning point by Slovak press.

<sup>69</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists.

<sup>70</sup> The first related to the former Prime Minister's verbal attacks on journalists and the media in Slovakia whom he accused of leading an open war against his party. The second concerned the revelation of the existence of a wide-ranging surveillance operation on journalists conducted between March 2017 and February 2018 by a former intelligence agent, on behalf of the individual linked with the Kuciak- Kušnírová murders. Media also reported that the surveillance team obtained extensive access to official police databases, collecting private data on journalists ranging from vehicle license plates to tax information. The third concerned a bill – later promulgated into law on 17 March 2019 – which mandates a right of reply for politicians and public officials who claim their honour or reputation has been damaged in media reports. The bill has been condemned by the Slovak Press Publishers' Association and other media freedom organisations. Finally, the former Slovak Commissioner of Police launched a negative communication campaign aimed at three journalists who have been covering the Kuciak-Kušnírová murders.

<sup>71</sup> The first concerned a case in which Slovak authorities brought criminal defamation charges against a newspaper opinion writer accused of offending religious believers for having mocked and sharply criticised a Catholic priest. The charges carry a potential sentence of one to three years in prison. The second alert, on 25 June 2020, concerned the case of an investigative journalist working for/publishing on a Slovak news website, who found a bullet in the mailbox of his Bratislava apartment. The journalist reported the incident to a local police station, an investigation has been opened and measures were taken to protect the journalist's safety.

<sup>72</sup> Article 72 of the Slovak Constitution.

<sup>73</sup> Article 87 of the Slovak Constitution.

<sup>74</sup> Political Manifesto, pp. 15-17.

<sup>75</sup> Political Manifesto, pp. 14-16.

priorities of the parties in the Government and the real involvement of social actors is limited<sup>76</sup>. Legislative initiatives by ministries have clear written rules and undergo an impact assessment, but the regular use of fast-track parliamentary procedures hampers evidence-based policy making, for example by not allowing for a proper impact assessment and consultation with stakeholders<sup>77</sup>. In addition, analytical capacities of ministries are weak and impair effective policy-making<sup>78</sup>. A whole-of-government approach to regulatory policy making was established in the Better Regulation Strategy and has helped to strengthen the methodological basis for assessing the economic impact of regulation. So far, this did not yield the expected results as impact assessments only apply to legislative measures initiated by the Government<sup>79</sup>.

**The Government is considering to strengthen the powers of the Constitutional Court.** This would concern the strengthening of powers of the Constitutional Court as regards the assessment of compliance of laws with the Constitution and proceedings of constitutional complaints regarding violations of fundamental rights and through individual control of constitutionality. The Government is also considering the possibility of introducing ex-ante control of compliance of laws with the Constitution<sup>80</sup>.

**Further work is necessary to strengthen the transparency, efficiency and accountability of the public administration.** While coordination mechanisms are in place, a pronounced departmentalism challenges coordination and efficient planning<sup>81</sup>. The creation of a National Strategic Plan<sup>82</sup>, as proposed by the new Government, could potentially improve internal coordination. The political cycle has a high impact on staff turnover<sup>83</sup>. The new Government has indicated that it aims to strengthen the civil service by making transparency and ethics key elements of this reform<sup>84</sup>.

**As of 16 March 2020, the Government declared the state of emergency in the health care system in order to face the COVID-19 pandemic<sup>85</sup>.** Following approval by the Government on 10 June, the national emergency officially ended on 13 June. On 13 May 2020, the Constitutional Court partially suspended a controversial legislation related to tracking information collected during the pandemic.

**Independent authorities play a role for safeguarding fundamental rights, but would benefit from clearer mandates, including full legal status and sufficient resources to exercise their roles effectively.** The Slovak National Centre for Human Rights is the competent National Human Rights Institution as well as the equality body in Slovakia. It prepares and publishes an annual report on the observance of human rights, including the principle of equal treatment. There remain some concerns over the independence of National Centre for Human Rights, and in 2018 the Ministry of Justice published a draft amendment to the legal framework to ensure that the Centre fully complies with the United Nations

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<sup>76</sup> Public administration characteristics and performance in EU28, p. 905.

<sup>77</sup> European Commission, 2020 Country Report Slovakia, SWD(2020) 524 final, p. 48.

<sup>78</sup> The Public Administration in the EU 27, p. 906.

<sup>79</sup> European Commission, 2019 Country Report Slovakia, SWD(2019) 1024 final, p. 44.

<sup>80</sup> Political Manifesto, p. 8.

<sup>81</sup> European Commission, 2020 Country Report Slovakia, SWD(2020) 524 final, p. 48.

<sup>82</sup> Political Manifesto, p. 77.

<sup>83</sup> Public administration characteristics and performance in EU28, pp. 902.

<sup>84</sup> Political Manifesto, pp. 4-5.

<sup>85</sup> Pursuant to the Article 5 of the Constitutional Law No. 227/2002 Coll.

Principles on the Status of National Institutions (‘Paris principles’)<sup>86</sup>. The draft amendments received criticism from the OSCE’s Office for Democratic Institutions and Human Rights<sup>87</sup> and the legal proposals failed to pass in June 2019<sup>88</sup>. Funding for the Slovak National Centre of Human Rights rests at the lower end on a comparative European scale and a lack of competence to issue legally binding decisions or to impose sanctions raises questions concerning its overall effectiveness<sup>89</sup>.

The Slovak Public Defender of Rights is an independent body, with the mandate to protect the fundamental rights and freedoms of natural persons and legal entities in proceedings before the public administration and other public bodies, if activities, decision-making or inactivity of the bodies is inconsistent with the Slovak legal order. It may also file a complaint with the Slovak Constitutional Court, if fundamental rights or freedoms of a natural person or legal entity are violated by a generally binding legal regulation. The Public Defender of Rights further submits an annual activity report and has the power to submit an extraordinary report if he finds that an infringement of fundamental right and freedom is significant or relates to a higher number of persons<sup>90</sup>. In its 2019 Activity Report, the Public Defender of Rights indicated that budgetary resources were insufficient to perform all its tasks properly<sup>91</sup>. The OSCE’s Office for Democratic Institutions and Human Rights in its Legal Opinion on the Slovak National Centre for Human Rights recommended defining the relationship between the Public Defender of Rights and the National Centre for Human Rights, clarifying the division of competences between them and fostering cooperation to avoid overlapping mandates<sup>92</sup>.

**The Supreme Audit Office of Slovakia is another key body tasked with supervising the accountability, quality and work of public authorities.** The purpose of the Supreme Audit Office is to point out uneconomical, inefficient and ineffective use of funds in state and local government organisations, state-owned enterprises, state-owned joint-stock companies or entities, in which the state has an equity interest or which fulfil the public interest<sup>93</sup>. Over the last years, the Supreme Audit Office has improved the frequency and quality of its performance audits, but their impact has been limited so far because it can enforce only limited changes<sup>94</sup>. The Government has indicated the intention to strengthen its competencies and it considers the possibility of imposing sanctions in the event that the inspection body does not eliminate the deficiencies identified by the inspection.

**Access to information, including to administrative decisions, is ensured by Slovakia’s legislation on access to governmental information.** This policy could however benefit from a holistic approach that also includes accountability and anticorruption actions<sup>95</sup>. If fully

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<sup>86</sup> European Commission, A comparative analysis of non-discrimination law in Europe 2019, p. 116.; see further the Principles relating to the Status of National Institutions (The Paris Principles), adopted by the United Nations General Assembly resolution 48/134 of 20 December 1993.

<sup>87</sup> OSCE-ODIHR, Opinion on the Draft Amendments to the Act on Establishment of the Slovak National Centre for Human Rights, 2019.

<sup>88</sup> European Network of Human Rights Institutions (2020), The rule of law in the European Union, p. 192.

<sup>89</sup> European Commission, Equality bodies making a difference, pp. 103, 105, 107.

<sup>90</sup> Input of Slovakia for the 2020 Rule of Law Report, point 39.

<sup>91</sup> Public Defender of Rights, Report on the Activities of the Public Defender of Rights for 2019, p. 44.

<sup>92</sup> OSCE/ODIHR, Opinion on the Draft Amendments to the Act on Establishment of the Slovak National Centre for Human Rights, pp. 4, 8, 9.

<sup>93</sup> Supreme Audit Office of the Slovak Republic, Report Audit Activities, Results in 2019.

<sup>94</sup> Public administration characteristics and performance in EU28, p. 899.

<sup>95</sup> See previous note, p. 909.

implemented, plans announced by the Government to expand access to information and broaden the application of open government<sup>96</sup> could further strengthen Slovakia's transparency policy.

**While Slovakia has an enabling framework for civil society in place, the Government has announced a policy for further strengthening civil society<sup>97</sup>.** In its political manifesto, the Slovak Government announced that it intends to strengthen the system for the financing of NGOs and to support organisations dealing with the protection and promotion of human rights, building democratic citizenship, eliminating all forms of discrimination and detecting corruption, among others<sup>98</sup>.

**There is an increasing attention for rule of law topics in society.** The assassination of investigative journalist Ján Kuciak and his fiancée in February 2018 triggered the biggest public protests in Slovakia since the Velvet Revolution in 1989. The murders were widely seen as an attack on the rule of law, civil society and freedom of expression. Stakeholders reported that these developments present an opportunity for Slovakia to break with its past, characterised by a high degree of political polarisation, which affected the functioning of institutions and public administration. The Government has placed the rule of law on top of its political agenda adopted in April 2020 and included plans for far-reaching reforms in this respect. In addition, the President of Slovakia in her first 'State of the Republic' address in June 2020 stressed the importance of the rule of law for society and democracy<sup>99</sup>.

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<sup>96</sup> Political Manifesto, pp. 6-7.

<sup>97</sup> The CIVICUS Monitor considers the civic space in Slovakia as 'narrowed'. Cf. CIVICUS Monitor – Tracking Civic Space; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed. The latest update by CIVICUS on Slovakia took place in 2016.

<sup>98</sup> Political Manifesto, pp. 17-18.

<sup>99</sup> President of the Republic (2020), Report on the State of the Republic.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

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## **Annex II: Country visit to Slovakia**

The Commission services held virtual meetings in May and June 2020 with:

- Corruption Prevention Department
- Ministry of Justice
- Ministry of the Interior
- National Crime Agency of the Police
- Office of the Prosecutor General
- Office of the Special Prosecutor
- Slovak Council for Broadcasting
- Transparency International Slovakia
- Via Iuris

\* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU